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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,738	12/17/2003	Tal Davidson	P-5452-US	5611
49443	7590	05/21/2009	EXAMINER	
Pearl Cohen Zedek Latzer, LLP 1500 Broadway 12th Floor New York, NY 10036			ROY, BAISAKHI	
		ART UNIT	PAPER NUMBER	
		3737		
		MAIL DATE		DELIVERY MODE
		05/21/2009		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/736,738	DAVIDSON ET AL.	
	Examiner	Art Unit	
	BAISAKHI ROY	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 February 2009.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13, 15-19, 21-27 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13, 15-19, 21-27 and 29-32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/7/09</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-13, 15-19, and 21-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-13, 15-19, 21-27, and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gazdzinski (20010051766) in view of Chakeres (5690108) and further in view of Seibel (6975898).

Gazdzinski discloses a system and method for capturing in-vivo images with a swallowable capsule with said system comprising an autonomous in-vivo device or probe 300 with a housing 302 which includes an illumination device or LED 504, an imager obtaining acoustic images or other types of images [0191, 0267], a detector or CCD array 402, and a transmitter or data transfer terminals 532. The capsule also includes a transparent piece or lens 306a, with lens cover 308 as an optical dome [0153] for selective wavelength filtration [0151]. The image is captured with minimal optical distortion [0151]. The reflection coefficient may be adjusted according to the variable dimension of the cavity of the in-vivo device with its' variable resonance properties [0438]. The images obtained are displayed on a display unit [0191].

Gazdzinski however does not teach the use of a non-linear scale on the transparent piece. In the same field of endeavor Chakeres discloses an image capture device for determining the distance between an anatomical feature and the inserted medical device with a reference/grid pattern integrated with the device that is linearly and angularly movable and positioned relative to the region of interest. The assembly includes a non-linear scale 58 or circular scale embossed on a circular frame element 34 with graduations or lines calibrated to indicate positive and negative distance differences (col. 7 lines 56-63). The image is displayed on a display unit and shows the distance and orientation between the image plane and the reference axis of the device pattern to physically define a point on the pattern that corresponds to a point on the image. It would have therefore been obvious to one of ordinary skill in the art to use the teaching by Chakeres to modify Gazdzinski such that the lens cover may include the non-linear scale to carry out size calculations.

Chakeres teaches obtaining distance measurements between anatomical features and the inserted medical device within the anatomy of the patient but do not teach obtaining said measurements based on illumination intensity. In the same field of endeavor Seibel discloses an endoscopic imaging device for determining the distance between the in-vivo imaging device and the object or tumor in the in-vivo image and based on the intensity of light that should be applied during endoscopic surgery for mapping a particular region of interest (col. 24 lines 16-41). The distance is measured between a first and second point on the region of interest. It is obvious that the distance measurement to the object would be inversely proportional to its reflection coefficient.

Therefore it is true that as the distance to the object increases, the reflection coefficient of the object decreases. It is also obvious that the distance calculation would be dependent on the transparency of the GI fluids or visibility of key regions or tumors/lesions within the fluid. It would have therefore been obvious to one of ordinary skill in the art to use the teaching by Seibel to modify Gazdzinski and Chakeres such that the size of the tissue object on the image can be measured effectively with relative to the illumination intensity of the illumination device.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAISAKHI ROY whose telephone number is (571)272-7139. The examiner can normally be reached on M-F (7:30 a.m. - 4p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN CASLER/
Supervisory Patent Examiner, Art
Unit 3737

BR
/B. R./
Examiner, Art Unit 3737